

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC.

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.
and SAMSUNG SEMICONDUCTOR, INC.,

Defendants.

Civil Case No. 2:21cv463-JRG

JURY TRIAL DEMANDED

**SAMSUNG'S OPPOSITION TO NETLIST'S MOTION FOR LEAVE
TO FILE ONE MOTION TO STRIKE PER EXPERT REPORT (Dkt. 215)**

[REDACTED]

Netlist fails to provide any justification for unilaterally deciding to double its page limit for its motions to strike. *See* Dkt. No. 215. The Court should therefore deny Netlist's motion for leave to file one motion to strike per expert report and disregard the second-filed motion related to any single expert.

Local Rule CV-7(a)(2) provides that “[n]on-dispositive motions shall not exceed fifteen pages, excluding attachments, unless leave of court is first obtained.” Local Rule CV-7(a)(2). In the past, the Court has permitted parties to file one motion to strike per expert absent leave to file additional motions based on a showing of good cause. *See, e.g., Tyco Healthcare Grp., LP v. Applied Med. Res. Corp.*, No. CIV.A. 9:06-CV-151, 2009 WL 5842064, at *4 (E.D. Tex. Mar. 17, 2009) (stating that the Court “would only permit one motion to strike expert testimony absent leave”); *Smartflash LLC v. Apple Inc.*, No. 6:13-CV-447, 2014 WL 12775670, at *2 (E.D. Tex. Oct. 20, 2014) (stating that parties “may file no more than one motion to exclude each expert absent a showing of good cause”).

Consistent with precedent and the Court's longstanding rules, Samsung drafted a single motion to strike for each of Netlist's experts, even though Netlist's experts submitted multiple reports totaling [REDACTED]. *See* Dkt. No. 202 (Samsung's motion to strike portions of Dr. Brogioli's three expert reports [REDACTED]); Dkt. No. 203 (Samsung's motion to strike portions of Dr. Groehn's expert report [REDACTED]); Dkt. No. 204 (Samsung's motion to strike portions of two of Dr. Mangione-Smith's expert reports that [REDACTED]); Dkt. No. 205 (Samsung's motion to strike portions of Dr. Kennedy's two expert reports [REDACTED] [REDACTED]).

The parties met and conferred on February 2, 2023, the day before the parties' motions to strike were due, and Netlist informed Samsung for the first time of its intention to file one

motion *per report* rather than one motion per expert—thereby greatly increasing its page count.

On February 3, 2023, Samsung stated that it disagreed that Netlist’s approach was proper, and pointed out the burden and manifest unfairness in Netlist’s disregard for the Court’s rules. In particular, Netlist did not explain why it failed to seek leave of Court *in advance* of the deadline to file motions to strike, thereby offering the Court the chance to consider whether to double the page count for Netlist’s motions. Netlist apparently prefers to seek forgiveness rather than permission for its novel one-motion-per-report approach.

Netlist has not demonstrated good cause to multiply its page count allotted by Local Rule CV-7(a)(2) by serving one motion to strike per report rather than per expert. Netlist argues that Samsung’s experts [REDACTED]

[REDACTED] Dkt. No. 215 at 1, but as explained above, Samsung faced substantially the same volume of expert reports on the same issues yet was able to comply with the Local Rule CV-7(a)(2)’s page limit. Apart from the length of Samsung’s experts’ reports, Netlist provides no reason for its unilateral decision to extend its page limit. Netlist’s stated basis for good cause is insufficient.

Moreover, Netlist’s extension of its page count in this manner clearly prejudices Samsung, which should not be limited to half the pages used by Netlist for the same set of motions and which was required to respond to Netlist’s additional, unauthorized arguments. Because Netlist has not demonstrated good cause, and because Netlist’s approach prejudices Samsung, the Court should deny Netlist’s motion.

[REDACTED]

Date: February 17, 2023

Respectfully submitted,

/s/ Francis J. Albert

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on February 17, 2023. As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A) and by email.

/s/ *Francis J. Albert*

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I certify that the following document is authorized to be filed under seal pursuant to the Protective Order entered in this case.

/s/ Francis J. Albert